

**RUMSON ZONING BOARD OF ADJUSTMENT
MARCH 19, 2013
MINUTES**

Chairman Conklin called the regular meeting to order at 7:30 p.m. with the Pledge of Allegiance. The Roll was called with the following members present: Conklin, Atwell, Wood, Duddy, Brodsky, Thompson. Also present: Bernard Reilly (Board Attorney), Fred Andre (Zoning Officer), State Shorthand.

The requirements of the Open Public Meetings Act were stated as met.

Mr. Andre was sworn in at this time.

Christopher & Stasia Pearson, 7 Heathcliff Road

Mrs. Pearson, still under oath from the last meeting, appeared to say that she has met with her neighbors regarding the proposed screening for her property, as discussed last month. Mr. & Mrs. Parton, who testified as neighbors at the last meeting, were present this evening and expressed their approval of the plan. Mr. Reilly presented a resolution of approval. Chairman Conklin questioned the frontage mentioned (394'), and this was found to be correct. Mr. Thompson moved to adopt the resolution, and Mr. Duddy seconded.

Roll Call Vote: Ayes – (Eligible) – Conklin, Atwell, Wood, Brodsky, Thompson Duddy

Nays – None

Motion carried.

Judith Trepanier, 27 Waterman Ave.

Brooks Von Arx, attorney, appeared on behalf of the applicant. He noted that there were only six Board members present, and he suggested they postpone their application until next month's meeting to give them the opportunity of having more Board members present. This was approved.

Richard & Bonnie Rizzetta, 25 Avenue of Two Rivers

Mr. Rizzetta was sworn in at this time. He explained their application to install an A/C unit in his side yard, which will create a side yard nonconformity (5' required / 2' proposed). Prior to the October storm, their unit was in the rear under the deck. They would like to install it more out of harm's way, and the only place that seems best is in the side yard. They have spoken to the neighbor on this side, who expressed no objection. The unit will be elevated approximately 16" off the ground. The size is 27.58 sq. ft. overall. The neighboring house is close, but they have spoken to this neighbor who has no objection. There is probably about 12' - 15' between the homes. The A/C unit would be on the side toward the front corner, closest to the street. There will be two condensers. According to his contractor, they should not be under the deck, because not enough clearance can be provided in this area. He thinks the Board should grant the variance, since the prior location was not conducive to the optimal operation of the units, and they believe their plan is the best location.

Chairman Conklin thought the proposed location might still create a compromise for the units, since it is a low lying area. It is hard for the Board to approve two A/C units 2-3' off the

neighbor's property, even though they have not expressed any objection. Mrs. Rizzetta was sworn in and explained the newly-proposed location of the A/C units, agreeing with her husband that this is the best location. The new location will be farther away from the neighbor's property than their prior location.

Mr. Brodsky wanted to establish what the actual hardship would be, and whether there might be another place to put the units to present less of a nonconformity. Mr. Rizzetta said the deck goes around the rear of the house and around the side, and the units cannot be put under anything again, since there would not be enough clearance, as per the recommendation of the manufacturer.

Chairman Conklin suggested another area near the deck with screening – not going under the deck.

Mr. Duddy asked what the elevation gained would be by moving the units to the proposed spot, and Mr. Rizzetta said it depended on the height of the platform, which will probably be about 16" – bringing them above the base flood elevation. Their proposal would bring them about 2' higher. It was noted that there are windows overlooking the deck area where the A/C units currently exist.

Chairman Conklin suggested removing a portion of the deck to put the A/C in the same spot, raised, and install screening.

There were no questions or comments from the public.

Mr. Thompson raised another issue regarding servicing the units, and the requiring of a possible right-of-way to get to the unit, which is very tight with their plan. He understands the water issue, but he does not think there is a hardship to move the units to the side yard and create the side yard nonconformity.

Chairman Conklin agreed that photos would be helpful to the board, and they think there may be an easy alternative that would not require a variance.

Mr. & Mrs. Rizzetta are willing to reconsider the Board's suggestions. The Board members agreed that they were not convinced that the units should be installed 2' from the property line on the side yard. The matter will be continued to the next meeting, with no further notice required. If the units are located to the rear, the applicants would not be required to reappear, since no variance would be required. Any plan that did continue a variance would mean they would need to come back before this Board.

Judith Trepanier, 27 Waterman Ave.

Brooks Von Arx, attorney, appeared on behalf of the applicant, and reported they have decided to proceed at this time. He described the lot as a large, oversized lot in the R-5 Zone, 16,000 sq. ft. in size. The minimum requirement in this zone is 6,000 sq. ft. The property was affected by Super Storm Sandy. Of the two houses on the property, the cottage next to the water sustained

substantial flooding damage, and there was also damage to the main house. The cottage structure requires a substantial amount of work to put it back into a reasonable shape.

Mr. Von Arx reported that this property appeared before the Board in 2008, when Ms. Trepanier made application to make changes to the main house in the front of the property, which did not happen. This approval included expansion to the existing house. They are asking today for approval to fix the cottage and add a modest addition. This structure dates back to the 1930's and is in need of substantial upgrading. They would like to lift the existing cottage to meet the current flood requirements.

Ms. Trepanier was sworn in and stated she is the owner of the property and occupies the cottage as her home. She described the cottage before the flood as an older home. After the flood she had 3' of water inside, and she described the damage that occurred due to the storm. She would like to make this house beautiful and functional again and comply with the new flood regulations. The cottage is dated and in need of upgrading. After the flood, the interior walls collapsed, and she lost everything. She consulted with an architect and decided on a plan to make the home habitable. She noted that she rents out the main house on the property.

Richard Groves, architect, was sworn in, and the Board accepted his qualifications. He noted that the numbers on the plan before the Board represent both structures on the lot. He described the cottage as a home with substantial damage – mostly in the interior. It is necessary to remove the interior walls, and the fire place also does not work. There are currently three bedrooms in the cottage, and they propose to have three bedrooms after their construction. In order to accomplish this, he proposes to renovate the home and add a small addition to extend 11 ½' from the footprint – still maintaining the look of a modest house. The new front elevation will be accomplished by raising the house to the 15' elevation, with two stories above the first floor. The overall height of the house would be 31' from the grade, which is still under that allowed. This is an accessory structure on the lot.

Chairman Conklin commented that the FAR appears to have been substantially increased for a secondary building on the lot. He does not think this is a modest home. The garages on the property were removed, according to Ms. Trepanier.

Mr. Reilly suggested this cottage was probably for guests at one time, and not a personal residence.

Chairman Conklin understands what Ms. Trepanier went through after the storm; however, the Board needs to make sure they consider the correct facts regarding the application. He noted that this application appears to have two personal residences, and the Board noted that this type of use could not be proposed on any other lot.

Mr. Brodsky stated that this is a substantial expansion of a nonconforming use, which is technically not permitted. They are rebuilding the house for all intents and purposes. He asked if this should be evaluated as the principal structure, and whether this could be considered a principal residence at some time in the future.

Chairman Conklin noted that their last application stated that this structure was a rental unit. Ms. Trepanier explained that this has been her principal residence for the past four years.

Mr. Von Arx stated it will be very expensive to raise the structure and make it livable. He noted that the dual use of the property for two residences has occurred since the 1930's. They are required to raise the house, and they propose a very attractive design. They think this is a reasonable way of handling the refurbishing of the house and do the best for the property and the neighborhood

The house is oriented east to west. The side facing the water has a technical rear hard setback variance. There would be no substantial impeding of the view of the river with their plan. He thinks they have a special circumstance in this case.

Chairman Conklin pointed out that they are proposing two main houses on a single lot with no planner to provide expert testimony.

There were no questions or comments from the public.

Mr. Thompson asked about the neighbor's properties and how they survived the storm. Ms. Trepanier said that the neighborhood is improving and many of the homes have recently been rebuilt. She described her neighbor's storm experience.

Mr. Brodsky asked why they could not move the house back to conform to the setback, and Mr. Groves said they had not considered this. It may be too risky in this case, although it could be done. Mr. Brodsky feels the increase in the size (+667 sq. ft.) plus the additional height is adding a lot to the property. The flood elevations were discussed, and Mr. Andre also noted that garages are required, so the ones removed would need to be replaced under the ordinance.

Mr. Reilly said they require a use variance, which would require five affirmative votes out of the six members present. The argument is that it is expensive to raise the house, and it would not be warranted, unless they can have additional space. He does not know if this would constitute a basis to overrule some limitations, such as floor area, etc. If the Board approves this application, then future applicants could request the same approval for a bigger structure.

Mr. Von Arx said they conform to all requirements, except for the additional 1 ½' intrusion into the rear yard setback. Mr. Reilly again thinks the size and use is the argument in this case.

Mr. Duddy thinks the issue is that there are two homes on one lot, and they are expanding a nonconforming use.

Mrs. Atwell pointed out that the secondary home would now be larger than the primary home on the lot.

Mr. Duddy thinks there may be several other areas in town that would be asking for the same approval and ask for the same variances.

Mr. Von Arx expressed his opinion that these are extraordinary circumstances and their plan conforms, except for the rear yard setback, which he does not think is significant.

Chairman Conklin asked if two main houses would be allowed on one piece of property, and Mr. Von Arx said he is not aware of any, and this is a nonconforming situation, which would require a variance.

After consulting with his client, Mr. Von Arx asked that the matter be carried to the next meeting to allow them to take into account the comments of the Board. Mr. Duddy asked if the main house will be rented, and Ms. Trepanier said it would.

Mr. Thompson thinks there are significant issues, and he thinks they should reconsider their application. He has a problem with two residences on one property, even though it is an existing condition.

Mr. Brodsky thinks the expansion makes it no longer a secondary residence, but more of another primary residence.

The application will be carried to the April 16th meeting with no further notice required, unless the application is significantly changed.

A short recess was taken at this time (9:00 p.m.).

Randolph Rosen, 2 Broadmoor Drive

Mr. Rosen was sworn in and explained his plan to construct a new residence, cabana, and in ground pool. They had appeared before the Board previously, and they have now proposed a new entrance to the property from Broadmoor Dr. (primary). Mr. Andre said they do not need a variance to live in the house, but only need to post a bond for demolition. This is the same plan as before, except for the driveway proposal and the cabana. The only variance required is for the frontage, which cannot be changed. The front of the house still faces Rumson Road.

There were no questions or comments from the public. Mr. Brodsky moved to approve the application, and Mr. Thompson seconded.

Roll Call Vote: Ayes –Conklin, Atwell, Wood, Brodsky, Thompson Duddy

Nays – None

Motion carried.

Monica Pahuliz, 3 Parmly Street

William Meyer, attorney, appeared on behalf of the applicant, who is the contract purchaser of the property. He noted that the numbers on the original plan were incorrect, and they have now been corrected. He noted that some modifications have been submitted since their last hearing. The existing house front setback has been improved and now conforms to most of the homes in the area. The garage setback has also been improved with this application. Mr. Andre has reviewed the new numbers.

Mr. Kusmick, architect, was still under oath from their last hearing. They have worked with Mr. Andre and made some changes, based on the Board's comments at the last meeting:

- Building Coverage - Mr. Andre explained that everything was kept under the building coverage, for a total of 1,391 sq. ft. They are permitted by ordinance (including garage credit), 1,392 sq. ft., making them 1 sq. ft. under that allowed.
- Lot Coverage – 2,541 sq. ft. required / 2,010.97 sq. ft. proposed;
- Floor area – 2,284.97 sq. ft. proposed / 2,286 sq. ft. permitted.

The Board noted that the numbers represent the maximum allowed on the lot. Chairman Conklin asked what was done to address the Board's concerns about the size. Mr. Meyer said they have cut some of the building off and the building is smaller than what was previously proposed to reduce the impact from the street. They pushed the depth of the building by 16", so that the overall front to back dimension of the primary building was 40.2", allowing them to reduce the numbers and get them in sync with the requirements of the ordinance. They now conform to the rear setback, also. The front setback is now 24.2. The height of the building is now lower (overall height 33.3"). They reduced the pitch of the roof to 9' to provide this lower height.

There were no questions or comments from the public.

The main portion of the house is now setback 5' more than the prior application (24.8').

Dr. Wood asked how the 16" reduction in the depth occurred, and Mr. Kusmick explained how they accomplished this.

Mr. Duddy asked about the front and back setbacks and why they couldn't push the front back 1', and Mr. Kusmick said he would not have a problem with this, and their suggested 9-10" additional space was to leave space for a margin of error.

The changed garage location is also an improvement over the prior application, providing a greater setback for the side and rear.

Mr. Meyer feels the plans will present an improvement to the lot and the neighborhood. They have complied with the board's requests and are willing to push the building back, if the Board should require this.

Mrs. Atwell asked about the HVAC on the side and whether any screening is proposed. Mr. Kusmick said it is adjacent to the driveway, and they did not want to impede air flow. They could provide some screening along the driveway edge, if required, to provide screening from the street.

Mr. Duddy thinks they have worked with the Board and the house now complies more closely than to what was formerly proposed.

Mr. Brodsky would like to see it pushed back as much as possible. The Board decided 6" would be reasonable.

Mr. Thompson thinks the screening is a good idea for the HVAC.

Mr. Duddy moved to approve the application with the condition that the house be pushed back 6" (25' front setback), and screening by provided for the A/C unit. Mr. Thompson seconded.

Roll Call Vote: Ayes –Conklin, Atwell, Wood, Brodsky, Thompson Duddy
Nays – None

Motion carried.

Frank & Patricia D'Orazio, 53 Bellevue Ave.

Brooks Von Arx, attorney, appeared on behalf of the applicants. The application was before the Board in 2008, and permission was granted to construct a house and pool. The house was constructed, but not the pool. These are new owners of the property, and they would like to now construct the pool in approximately the same place as the original approval.

Mr. Steven Krog, landscape architect, was sworn in, and the Board accepted his qualifications. He described the lot as a slightly nonconforming lot in area with an odd shape. It is 1.35 acres in size, where 1.5 acres are required. The proposed pool conforms to the required setbacks. He indicated the area for the proposed pool and patio on the east side via a plan provided. The pool and hot tub would be set back 25.5', as required. There is substantial buffer between this area and the adjoining properties. He showed the Board photos of this area (taken last summer), and these were marked A-1. Another photo of the existing residence was marked A-2. There are evergreens screening the north and east of the pool, and another dozen would be planted on the south side when the pool is constructed. This design does not create any new nonconformities. The fencing area was shown on the map.

Chairman Conklin asked about the drainage, as was mentioned at the last application. Mr. Krog said that as a part of the landscape development over the past few years, they have installed a recharge drainage and pipe system using gravel surround that extends the entire north length of the house, and all stream water generated is directed to a series of inlets going into the recharge drainage. The pool patio slopes away from the pool, and a drain will collect water from this patio. On the south side, there is a drain inlet in the lawn, which will be piped into another recharge drain. The resulting runoff will be no more than what exists now and will be recharged into the ground. A grade change near the house will be terraced via a retaining wall.

Mr. Krog showed the Board a copy of the 2004 plan, which shows the original approved application. This plan improves over the original plan with the swimming pool now being in the middle of the terraced area, instead of at the lowest end.

The Japanese maple tree is to the south of the property and will not be affected by their plan.

Arthur Ashkin, neighbor to the north, was sworn in and asked about the location of the fence, since the property line goes through an existing tree. Mr. Krog acknowledged that there are a number of trees affected by the fence area, and they will make sure that the fence is installed on their property and not disturb the evergreens.

There were no other questions or comments from the public. Chairman Conklin asked if they would be willing to maintain the screening as to what currently exists, as it is very well done. The applicants agreed to this.

Mr. Thompson moved to approve the application, and Mrs. Atwell seconded.

Roll Call Vote: Ayes –Conklin, Atwell, Wood, Brodsky, Thompson Duddy

Nays – None

Motion carried.

Approval of Minutes

Mr. Thompson moved to approve the February minutes, with corrections, and Mr. Brodsky seconded. Voice Vote: Ayes, unanimous.

Resolutions

1. **Joseph & Eileen Pucci, 14 Edwards Point Road** – Approval to raze existing home and construct new residence.

Mr. Thompson moved to adopt the resolution, and Mr. Duddy seconded.

Roll Call Vote: Ayes (Eligible) – Conklin, Atwell, wood, Brodsky, Thompson, Duddy

Nays – None

Motion carried.

2. **Christine & Michelle Frank, 7 Brookside Drive** – Approval to construct new covered front entry and garden wall, new side open covered porch, rear one-story addition, and roof over existing rear deck.

Mr. Brodsky moved to adopt the resolution, and Mr. Thompson seconded.

Roll Call Vote: Ayes (Eligible) – Atwell, wood, Brodsky, Thompson, Duddy

Nays – None

Motion carried.

There being no further business, motion was made and seconded to adjourn. Voice Vote: Ayes, unanimous. The meeting was adjourned at 10:00 p.m.

Respectfully submitted,
Patricia Murphy
Clerk